



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 E Street N.W.
ULLB, 8th Floor
Washington, D.C. 20536

FILE: [REDACTED] Office: California Service Center

Date:

JAN 24 2003

IN RE: Applicant: [REDACTED]

APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who was present in the United States without a lawful admission or parole on November 21, 1992. On February 14, 1994, an Order to Show Cause was served on the applicant. On August 4, 1995, an immigration judge denied his application for asylum and withholding of deportation and granted him until September 24, 1995, to depart voluntarily from the United States in lieu of deportation. An appeal of that decision was dismissed by the Board of Immigration Appeals (BIA) on September 13, 1996, and the applicant was granted 30 days in which to depart voluntarily in lieu of removal. He married a lawful permanent resident on September 25, 1996, while in deportation proceedings. On April 15, 1997, the applicant filed a motion to reopen. The BIA denied the applicant's motion to reopen on September 23, 1997.

The applicant was removed from the United States on October 6, 1998, therefore, he is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). In November 2000 the applicant was again present in the United States without a lawful admission or parole and without permission to reapply for admission, in violation of section 276 of the Act, 8 U.S.C. § 1326 (a felony). Therefore, he is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II).

The applicant is the beneficiary of an approved Petition for Alien Relative and seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The director determined that the applicant is ineligible for the benefit sought pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), and denied the application accordingly.

On appeal, the applicant states that he is the only support for his wife and he had to return to the United States for her. The applicant submits other documentation relating to his marriage, including the visa petition approval notice and an additional statement.

Section 212(a)(9)(A) of the Act provides, in part, that:

(i) Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 of the Act or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(9)(C) of the Act provides that:

(i) Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Pursuant to section 212(a)(9)(C) of the Act, aliens who were unlawfully present in the United States for an aggregate period of more than one year and subsequently departed or who were previously ordered removed (and actually left the United States) and have subsequently either entered the United States without inspection or sought to enter the United States without inspection are inadmissible.

The applicant in this matter was removed from the United States on October 6, 1998, and unlawfully reentered the United States in November 2000. Therefore, he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and must remain outside the United States for at least 10 years before the Service will consider his application for permission to reapply.

Section 241(a)(5) of the Act, 8 U.S.C 1231(a)(5), provides that:

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after reentry.

Since the applicant is subject to the provisions of section 241(a)(5) of the Act, he is not eligible for any relief under this Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.